

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITIZENS BANKING CORPORATION,

Plaintiff,

v.

CITIZENS FINANCIAL GROUP, INC.

Defendant.

CIVIL ACTION NO. 07-11514

DISTRICT JUDGE ARTHUR J. TARNOW

MAGISTRATE JUDGE DONALD A. SCHEER

**ORDER GRANTING IN PART RBS CITIZENS' MOTION TO COMPEL PLAINTIFF'S
PRODUCTION OF A DOCUMENT PREPARED, REVIEWED AND RELIED UPON BY
DEPONENT TO REFRESH HER RECOLLECTION OF MATTERS TESTIFIED TO**

RBS Citizens' Motion to Compel Plaintiff's Production of a Document Prepared, Reviewed and Relied Upon by Deponent to Refresh Her Recollection of Matters Testified To was referred to the undersigned magistrate judge for hearing and determination. The parties appeared, by counsel, for hearing on November 15, 2007. Having reviewed the Motion, the Brief in Response and the Movant's Reply, and having had the benefit of oral argument, I find that the Motion should be granted, in part.

Karen Magidsohn, an employee of Plaintiff Citizens Banking Corporation ("CBC"), was examined in a deposition on September 21, 2007. She testified that, prior to her deposition, she was present at a meeting between CBC's outside counsel and several CBC employees who were scheduled to be deposition witnesses. The meeting lasted approximately two hours, and Magidsohn took notes memorializing the matters discussed. She testified further that she reviewed her notes prior to her testimony, and that they served to refresh her recollection as to facts. Magidsohn's notes, consisting of three notebook pages with entries on both sides of each, were submitted to the court for in camera review pursuant to Federal Rule of Evidence 612(2).

Based upon the court's in camera review, I conclude that the interests of justice require the production of certain portions of the deponent's notes to the movant. Specifically, I find that notes which appear to reflect propositions of fact, as opposed to legal theory and/or tactics, must be produced.

IT IS THEREFORE ORDERED that RBS Citizens' Motion to Compel is denied as to Pages 1 through 3, inclusive, of the deponent's notes. The Motion is granted with respect to the following portions of Pages 4 through 6 of the deponent's notes:

- a) Page 4 - beginning with the word "Today" on line 3 through and including the word "services" on line 32;
- b) Page 5 - beginning with the word "Our" on line 2 through and including the word "exam" on line 14, and including as well the diagonal, right side marginal note extending to line 19;
- c) Page 5 - beginning with the word "Ohio" on line 24 and extending to and including the word "confusion" on line 34;
- d) Page 6 - beginning with the word "What" on line 2 through and including the word "Ohio" on line 10.

IT IS FURTHER ORDERED that those portions of the notes withheld pursuant to this Order shall be preserved, under seal, in the record of this case for the possible use of the Appellate Court in the event of an Appeal, pursuant to the provisions of FRE 612.

All of which is Ordered this 21st day of November 2007.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on November 21, 2007 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on November 21, 2007. **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217